

To the Members of the California State Senate:

I am returning Senate Bill 1489 without my signature.

This bill revises and recasts budget trailer bill language that was part of the 2003-04 Budget. One provision, providing for the Attorney General to recover reasonable costs and fees upon prevailing in a public rights case, was subsequently called into question by a Superior Court in Tehama County as a violation of the single subject rule. Although SB 1489 reestablishes the invalidated provision in an independent measure, it raises fiscal allocation concerns.

When the Legislature required reasonable cost and fee recovery upon prevailing in a public rights case, it did so to ensure that the Department of Justice Public Rights Division could continue to fund its important public interest work during a time when an augmentation from the General Fund was not a priority of the Legislature. Furthermore, the Attorney General can recover court costs under existing law as a prevailing party, thereby ensuring that the Division does not suffer a net loss when it wins cases.

For Public Rights Division litigation, the funding source should be determined by the activity. When the Attorney General focuses litigation in a specific area, the funding for those activities should come from the Special Fund designated for such cases and the appropriate fund source should be the beneficiary of any recovered costs. If the AG needs additional resources, the existing budget process enables him to seek augmentation. For example, the 2006-07 Budget Act appropriated an additional \$1 million for climate change initiative litigation.

Sincerely,

Arnold Schwarzenegger